

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)	
)	
Amendment of Section 73.202(b))	
Table of Allotments)	MB Docket No. 05-112
FM Broadcast Stations)	RM - 11185
(Fredericksburg, Texas))	

To: Office of the Secretary
Attn: Assistant Chief, Audio Division
Media Bureau

REPLY TO OPPOSITION TO MOTION TO ACCEPT SUPPLEMENT

Capstar TX Limited Partnership, CCB Texas Licenses, L.P., Clear Channel Broadcasting Licenses, Inc., and Rawhide Radio, L.L.C. (together, "Joint Parties") hereby reply to the Opposition filed by Munbilla Broadcasting Properties ("Munbilla") to their Motion to Accept Supplement in the above-captioned proceeding. In support hereof, the Joint Parties state as follows:

1. In their Motion, the Joint Parties cited several cases in which the Commission had accepted supplements in similar proceedings. Munbilla attempts to distinguish those cases, but its attempts miss the point. The Commission clearly has the *authority* to accept the Supplement in this proceeding, since it is explicitly granted such authority in Section 1.415(d) of its Rules,¹ and it *should* accept the Supplement because it contributes to the resolution of this proceeding.

2. The reason that the Joint Parties filed a counterproposal in this proceeding was that the Commission had accepted and requested comment on a proposal that conflicts with the Joint Parties' earlier-filed and still-pending counterproposal in MM Docket No. 00-148 (Quanah, Texas). The Commission's processing rules require that all timely and conflicting proposals be

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considered together and resolved according to well-established priorities. Therefore, if the petition in this case is considered “timely” notwithstanding the Joint Parties’ earlier-filed and still-pending counterproposal, then the two need to be considered together. The re-filing of the Joint Parties’ counterproposal in this proceeding accomplishes that goal.

3. The question remains whether the petition in this case should be considered “timely.” Previously, when the Commission had accepted and requested comment on proposals that conflicted with the Joint Parties’ counterproposal, it had admitted error and rescinded the offending actions. See *Benjamin and Mason, Texas*, 19 FCC Rcd 470 (2004). It could do so here. However, since that time, the Commission has changed its procedural rules in a way that may have a bearing on its decision here. In *Auburn, Alabama, et al.*, 18 FCC Rcd 10333 (2003), the Commission held that it could accept and process rule makings and applications that were contingent on an effective but non-final grant of an amendment to the Table of Allotments. It recited that policy in the *Notice of Proposed Rule Making* in this proceeding.

4. The Joint Parties argued in their Supplement that this situation differs from the *Auburn, Alabama*, situation because here there has been no effective but non-final amendment to the Table of Allotments. If the Commission finds the petition acceptable under *Auburn, Alabama*, and the Joint Parties’ appeal in the Quanah proceeding is successful, then the two proceedings will need to be considered together, just as if the Joint Parties’ counterproposal were considered in this proceeding. Either way, the analysis will be the same.

5. However, under either scenario, Munbilla’s construction permit for KHLB(FM) will not enjoy cut-off protection from the Joint Parties’ counterproposal. That construction permit was explicitly conditioned on the final outcome of MB Docket No. 00-148. The Joint Parties’ counterproposal in MB Docket No. 00-148 and their counterproposal in this proceeding

¹ See 47 C.F.R. § 1.415(d) (allowing additional comments *if authorized* by the Commission).

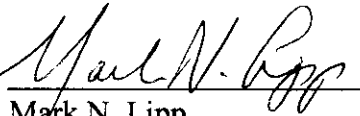
are the same. The only difference is in the passage of time. During that time the Commission has accepted and granted Munbilla's conflicting application. But this event cannot convert an acceptable counterproposal into an unacceptable counterproposal. If the Joint Parties' counterproposal is acceptable in this proceeding *but for* Munbilla's construction permit, then it was acceptable *ab initio* in the Quanah proceeding.

WHEREFORE, for the foregoing reasons, the Commission should deny Munbilla's opposition and accept and consider the Joint Parties' previously filed Supplement.

Respectfully submitted,

RAWHIDE RADIO, LLC

By:

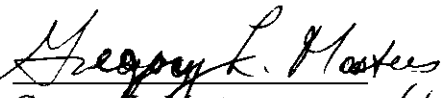

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July 11, 2005

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CERTIFICATE OF SERVICE

I, Giselle A. Abreu, an executive legal secretary in the law firm of Vinson & Elkins, L.L.P., do hereby certify that I have on this 11th day of July, 2005, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "**Reply**" to the following:

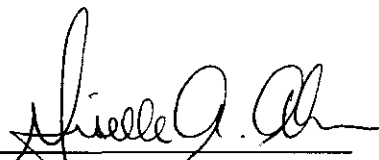
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